

REMARKS/ARGUMENTS

Claims 1-3 and 5-8 are pending in the present application, of which claims 1, 5, and 6 are independent. Claims 1-3, and 5-8 are hereby amended. No new matter has been added.

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

On pages 5-6, the Examiner provisionally rejects claims 1, 5, and 6 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1, 2, 4, and 10-12 of copending Application No. 10/849,830 to Vinokurov et al (hereinafter "Vinokurov"). Applicant respectfully traverses these rejections for the reasons set forth below.

According to M.P.E.P. § 804, since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a rejection under 35 U.S.C. § 103(a), the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a), are employed when making an obvious-type double patenting analysis. Therefore, any obviousness-type double patenting rejection should make clear both the differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and the reasons why a person of ordinary skill in the art would

conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent.

For the present application, Applicant respectfully submits that the Office Action has failed to present a *prima facie* case of obviousness-type double patenting. Contrary to M.P.E.P. § 804, the Office Action has failed make clear the differences between the inventions defined by the conflicting claims. Instead, the Office Action has merely alleged, on page 5, that the pending claims are "broader" than claims 1 and 10 in the copending application and has argued that they correspond "in general" to combinations of claims in the copending application. In addition, the Office Action has failed to present any reasons why a person of ordinary skill in the art would conclude that the pending claims would have been an obvious variation of the claims in the copending application.

Furthermore, while the rejection lists copending Application No. 10/849,830, that application issued as U.S. Patent No. 7,307,997 on December 11, 2007. Independent claims 1 and 10 in the issued patent both specify collection of statistics on a "per user basis" (emphasis added). However, the recited claims use an aggregated solution instead of per user statistics, the advantages of which are described in paragraph [026] of the specification. Because claims 1, 5, and 6 are clearly drawn to aggregated traffic instead of traffic measured on a "per user basis,"

Applicant respectfully requests withdrawal of the obviousness-type double patenting rejection of claims 1, 5, and 6.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(E)

On pages 6-8, the Examiner rejects claims 1-3 and 5-8 as allegedly anticipated by Published U.S. Patent Application No. 2003/043740 to March et al. (hereinafter "March"). Applicant respectfully traverses these rejections for the reasons set forth below.

As amended, independent claim 1 recites "aggregating said INVITE messages and said 180 Ringing messages for all users on said Internet accessible network" (emphasis added). Support in the specification for the subject matter added to the independent claims can be found in, for example, paragraph [0026] of the specification as filed. Similar subject matter now appears in independent claims 5 and 6.

The above-quoted subject matter provides significant advantages. As described in paragraph [0026], by analysis of aggregated traffic, the recited subject matter does not suffer from the problem of exhausting resources by maintaining statistics per user. As further disclosed in paragraph [0027], the recited subject matter uses the 180 Ringing message to reduce the number of false positives.

Applicant respectfully submits that March does not disclose, teach, or suggest the above-quoted and described subject matter. While March protects a network from unauthorized access, March does not detect DoS attacks in the recited manner. As disclosed in paragraph [0005], the central concept of March is detecting that a rate of incoming data units exceeds a threshold or that the incoming data units do not match a specified pattern; March does not compare Invite and 180 Ringing messages. As a result, a system operating according to the disclosure of March would not detect DoS attacks in the recited manner.

Moreover, the operation of March's DoS module does not resemble the subject matter now recited in independent claims 1, 5, and 6. As described in paragraph [0097] of March, DoS module establishes expected traffic patterns and thresholds on a per-session basis instead of performing analysis on aggregated traffic. As further disclosed in paragraph [0100], March's DoS module compares the number of packets received in a predefined time period to a threshold for a call session. Alternatively, as disclosed in paragraph [0102], March compares a codec type specified in a predetermined number of packets to a codec type stored in the DoS profile.

On page 4 of the Office Action, the Examiner alleges that "if March compares the rate of the INVITE messages against a predefined threshold to detect a DoS attack it would be the same as if it subtracts the number of SIP 180 Ringing messages from the INVITE message to detect a DoS." In response, Applicant

respectfully notes that independent claims 1, 5, and 6 now recite "a number," subject matter that finds support, for example, in paragraph [020] of the specification. Thus, while March compares a message rate to a threshold, the recited subject matter, as defined by independent claims 1, 5, and 6, compares numbers of messages. Applicant respectfully submits that this subject matter is patentable over March, because a rate comparison is not equivalent to a number comparison.

Therefore, Applicant respectfully submits that independent claims 1, 5, and 6 are allowable. Claims 2-3, 7, and 8 depend from allowable claims 1, 5, and 6, respectively. Thus, Applicant respectfully submits that claims 2-3, 7, and 8 are allowable at least on the basis of their respective dependencies upon allowable independent claims.

For at least the foregoing reasons, Applicant respectfully requests that the rejection of claims 1-3 and 5-8 under 35 U.S.C. § 102(e) be withdrawn.

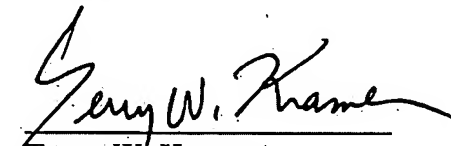
CONCLUSION

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

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Respectfully submitted,
KRAMER & AMADO, P.C.


Terry W. Kramer
Registration No.: 41,541

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KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria, VA 22314
Phone: 703-519-9801
Fax: 703-519-9802